

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ROBERT TROY ANDERSON,

Petitioner,

v.

No. 1:16-cv-01117-JDB-jay

UNITED STATES OF AMERICA,

Respondent.

ORDER REFERRING MATTER TO MAGISTRATE JUDGE
FOR POSSIBLE APPOINTMENT OF COUNSEL,
DIRECTING PETITIONER TO FILE AN *IN FORMA PAUPERIS* APPLICATION
AND TRUST FUND ACCOUNT STATEMENT,
AND
DIRECTING CLERK TO SEND FORM

Petitioner, Robert Troy Anderson, has filed a *pro se* motion to vacate, set aside, or correct his sentence (the “Petition”), pursuant to 28 U.S.C. § 2255. (Docket Entry (“D.E.”) 1.) Anderson claims, among other things, that he is entitled to a delayed direct appeal because his attorney ignored his explicit direction that he file a notice of appeal.¹ In response, the Government has submitted defense counsel’s affidavit in which he represents that he has “no recollection of Mr. Anderson wanting to file a Notice of Appeal after signing the plea agreement.” (D.E. 10-1 at PageID 26.)

Under these circumstances, the Court must hold an evidentiary hearing to resolve the factual dispute. *See Campbell v. United States*, 686 F.3d 353, 360 (6th Cir. 2012) (holding a district court must provide an evidentiary hearing on disputed question of whether petitioner

¹ Petitioner’s claim under *Johnson v. United States*, 135 S. Ct. 2551 (2015), was denied on April 23, 2018. (D.E. 5.)

directed defense counsel to file a notice of appeal) (citing *Arredondo v. United States*, 178 F.3d 778, 782 (6th Cir. 1999)). Pursuant to Rule 8(c), counsel must be appointed to represent Petitioner at the hearing if he “qualifies to have counsel appointed under 18 U.S.C. § 3006A.” *Rules Governing Section 2255 Proceedings for the United District Courts*, Rule 8(c).

Therefore, the matter is REFERRED to United States Magistrate Judge Jon A. York to determine whether Petitioner qualifies for appointment of counsel. The inmate is ORDERED to file an *in forma pauperis* application and a copy of his inmate trust fund account statement within twenty-one (21) days of the date of entry of this order.

The Clerk is DIRECTED to send Petitioner an *in forma pauperis* application form.

The date and time of the evidentiary hearing will be set by separate order.

IT IS SO ORDERED this 24th day of April, 2019.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE